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No. 71-973

In the Supreme Court of the United States

OCTOBER TERM, 1971

NORMAN TYRONE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-976

NORMAN TYRONE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a trial without a jury in the United States District Court for the District of Nevada, petitioner was convicted on two counts of a three-count indictment charging him with perjury in his testimony before a grand jury, in violation of 18 U.S.C. 1621. On February 26, 1971, the court ordered him to pay a fine of $2,000 on each count, and placed him on probation for three years. The court of appeals affirmed (Pet. App. A).

Petitioner, a mortgage broker, had assisted the Pacific Bridge Company to obtain a loan from the Teamsters union pension fund to finance the construction of a resort hotel and casino at Lake Tahoe (Pet. App. A, at p. 19). When petitioner appeared before a grand jury investigating possible mail and wire fraud

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and possible prohibited payments to the trustees of the fund, he was advised of the nature of the inquiry and the grand jury's interest in this particular project. (G.J. 4–7).[1] Count one of the indictment in this case alleged that, while under oath, petitioner falsely testified that he had not discussed with anyone, in connection with the Pacific Bridge Company application, that the cost of a loan from the pension fund would be approximately 10 per cent. Count two charged that petitioner falsely denied that a loan by the Pacific Bridge Company and associates to a mortgage computer service, which petitioner planned to organize, was a condition to his securing the loan from the pension fund.

At trial, the government's evidence showed that shortly before the pension fund trustees passed on the loan application petitioner told two representatives of Pacific Bridge (1) that the cost of getting any loan from the pension fund was approximately 10 per cent and (2) that, in order to get approval of the loan, the Company would have to invest a substantial sum in a Bahama based company that petitioner was thinking about organizing (Tr. 187–196; 307–309).

1. The evidence here fully meets the requirements of the "two-witness rule." *Weiler* v. *United States*, 323 U.S. 606. Both representatives of Pacific Bridge Company, the loan applicant, gave testimony completely at variance with petitioner's grand jury testimony. In addition, a former officer of the Com-

[1] "G.J." refers to the grand jury minutes and "Tr." refers to the trial transcript, both of which we are lodging with the Court.

pany corroborated this testimony by stating that petitioner, when first consulted about the Teamster loan, suggested that the Company invest in the proposed corporation in the Bahamas. (Tr. 124–126.)[2]

2. The indictment, which set forth *in haec verba* petitioner's testimony before the grand jury (Pet. App. C), clearly apprised him of the charges he had to meet. *Hagner* v. *United States*, 285 U.S. 427, 431.[3]

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1972.

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[2] Petitioner also contends that his failure to renew his motion for judgment of acquittal at the close of all the evidence did not constitute a waiver of his earlier motion (Pet. 12–15). But the court below did not base its ruling on any waiver theory; the court held instead that there was no substance to the claim that the evidence was insufficient to sustain petitioner's conviction (Pet. App. A 21–22).

[3] Contrary to petitioner's assertion, he did not previously challenge the sufficiency of the indictment. In the trial court he contended only that the three counts should be consolidated; on appeal he argued that dismissal of count 3 required dismissal of the remaining counts. (The district court dismissed count 3 at the close of the government's evidence (Pet. App. A, at p. 20 n. 1).)

U.S. GOVERNMENT PRINTING OFFICE 1972